

July 31, 2017

Mr. Devin M. Leary
Human & Rohde, Inc.
516 Virginia Avenue
Towson, Maryland 21286

Re: Russel Motor Cars
Outfall Repair and Stormwater Management Retrofit
Forest Conservation Variance
Tracking # 01-17-2508

Dear Mr. Leary:

A request for a variance from the Baltimore County Code Article 33, Title 6 Forest Conservation was received by this Department of Environmental Protection and Sustainability (EPS) on July 6, 2017. This request proposes to base the forest conservation required by Section 33-6-111 of the Forest Conservation Law on the 0.5-acre limit of disturbance rather than the entire 4.9-acre commercially zoned parcel. The proposed development activities involve grading to retrofit a failing stormwater management facility and to provide a suitable outfall in place of the severely eroding outfall at this long-standing automobile dealership.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of his property. The applicant is seeking to reconstruct a stormwater quality feature and stabilize its outfall at the existing auto dealership to enhance water quality. While full application of the law to the entire property would result in unwarranted hardship due to project cost, it would not deprive the petitioner of all beneficial use of the property. Therefore, we find that this criterion has not been met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. The petitioner's plight is due to unique circumstances associated with repairing an existing stormwater management facility on a long-standing automobile dealership rather than general conditions of the neighborhood. Therefore, we find the second criterion has been met.

The third criterion (Subsection 33-6-116(d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. If granted, only 0.5 of the 4.9-acre dealership would be disturbed for the reconstruction project. Additionally, no change in land use will result due to the proposed retrofitting and stabilization activities. Therefore, we find that this criterion has been met.

The fourth criterion (Subsection 33-6-116(e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. The proposed construction activities are being undertaken to retrofit an existing stormwater feature, to provide a suitable outfall, and to stabilize an active and badly eroding slope. Additionally, there are no streams, wetlands or floodplains within close proximity of this work. Therefore, we find that granting of the special variance will not adversely affect water quality and that this criterion has been met.

The fifth criterion (Subsection 33-6-116(e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The petitioner has not taken any actions on the property necessitating this variance prior to its request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. Reducing the afforestation obligation based on limit of disturbance for the subject stormwater management and outfall improvements would be consistent with the spirit and intent of the Forest Conservation Law given that no impacts to specimen trees or water quality would result from the proposed construction. There will be a minor impact to roadside trees that are located within the existing U.S. Route 40 West right-of-way; however, this project is adequately addressing that offsite or by paying a fee in lieu. Therefore, this criterion has been met.

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Based on our review, this Department finds that all required criteria have been met. Therefore, the requested variance is hereby approved, in accordance with Section 33-6-116 of the Baltimore County Code, with the following conditions:

1. The 0.1-acre afforestation requirement, based on the project's limit of disturbance, shall be met either by paying a \$2,178 fee-in-lieu into Baltimore County's Forest Conservation Fund or by retaining forest offsite in an EPS-approved forest retention bank prior to issuance of any permits for the project. An offsite retention bank letter that shall serve as an instrument of agreement with the bank owner has been enclosed for your client's use. Should your client opt to pay a fee in lieu, any check shall be made payable to Baltimore County.
2. A forest conservation plan (FCP) must be approved by EPS prior to issuance of any permit. The revised FCP as well as the grading and sediment control plans shall contain a note indicating that this variance was granted and indicating how the afforestation requirement was met.
3. This variance approval does not exempt future development activities at this site from compliance with Baltimore County's Forest Conservation Law.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request. Please have the property owner sign the statement on the following page and return a signed copy of this letter prior to EPS approval of any permit.

If you have any questions regarding this correspondence, please call Michael S. Kulis at (410) 887-3980.

Sincerely yours,

Vincent J. Gardina
Director

VJG/msk

Enclosure

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I/we agree to the above conditions to bring the subject Baltimore County property into compliance with Baltimore County's Forest Conservation Law.

Owner's Signature

Date

Printed Name